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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 521 (CM)

5 DWAIN COLLYMORE,

6 Conference

7 Defendant.

8 -----x

9 New York, N.Y.
10 September 20, 2017
2:55 p.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 District Judge

14 APPEARANCES

15 JOON H. KIM

16 Acting United States Attorney for the
Southern District of New York

17 JARED LENOW

Assistant United States Attorney

18 JEREMY SCHNEIDER

19 DAVID STERN

Attorneys for Defendant

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(Case called)

THE COURT: Good afternoon. So I gather we're going forward not as a death case, and I have passed out a decision and order denying the defendant's suppression motions, and we have a trial date; right?

MR. STERN: All true.

MR. SCHNEIDER: All accurate.

THE COURT: All accurate?

MR. SCHNEIDER: Yes.

MR. LENOW: Yes, your Honor.

THE LAW CLERK: December 4, Judge.

THE COURT: What do we need to do?

MR. LENOW: Judge, so I don't think there's anything the parties need in terms of relief from the Court or requests from the Court. We thought that it would be helpful just to kind of do two things. One is just in terms of to preview for the Court what the Court can expect in terms of timing and types of evidence. We still think -- I think we had estimated two weeks before, and that's being conservative. I think we'll finish within that period of time.

THE COURT: I certainly hope so. It's right before the holidays. You'll have a very hard time getting jurors if you don't.

MR. LENOW: I think there's a strong incentive for everyone to move efficiently.

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1 As your Honor knows from prior conferences, this is a
2 murder case surrounding a push-in robbery of a local marijuana
3 spot in the Bronx. We expect we're going to have a couple
4 witnesses from the location who were there when the murder
5 happened. And some of the other kind of interesting facets of
6 the case to preview for the Court, one of the important pieces
7 of evidence in this trial's going to be some Google searches.
8 This murder was committed with a specific type of weapon. It's
9 essentially a handgun that uses shotgun shells. It's called
10 "The Judge." And one of the pieces of evidence the Court and
11 the jury's will see in this case, we anticipate, is going to be
12 Google searches by the defendant for that gun, "The Judge," in
13 advance of the murder. And there will also be some cell phone
14 location and toll records and that sort of evidence that one
15 would expect to see in a case like this.

16 So we do expect to finish within two weeks. We can
17 confer with defense counsel about various logistical matters.
18 The one we thought of flagging for the Court, we are having
19 discussions about various issues relating to witness *Giglio* and
20 when things will be turned over and that sort of thing. We're
21 in discussions, and I think there's a good chance we're going
22 to resolve this without Court intervention. I think we did
23 flag for the Court either the government or the defense might
24 be submitting a letter to the Court on this point to the extent
25 we can't reach agreement, but I think the parties are

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1 optimistic that we're going to work out procedures regarding
2 timing and confidentiality, that sort of thing. This is not a
3 case where we anticipate there being a large volume of that
4 sort of material, so I think we're going to resolve it. But we
5 don't have any dispute to bring before the Court at this time.

6 THE COURT: Hello, Mr. Stern.

7 MR. STERN: Hi. How are you?

8 THE COURT: Fine.

9 MR. STERN: Me too. Just so our position is clear,
10 what we were discussing was we don't know whether or not
11 witnesses in this case have criminal records or not or have
12 served time in jail. The government has informed us they
13 intend to withhold some of that information till relatively
14 late, and they have the right to do that under the statute.
15 But we've told them that were we to have that information, we
16 would get things like parole hearing minutes, plea minutes,
17 sentencing submissions, if there were statements made by
18 defendants before they pled guilty or were convicted after
19 trial, those kind of things.

20 THE COURT: You mean from other courts?

21 MR. STERN: Correct, state or federal court. We don't
22 know which.

23 THE COURT: All right.

24 MR. STERN: From the prisons in which they were held,
25 if they have disciplinary records. We told the government as

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1 well we're not interested in people who smoked marijuana or
2 snuck on the subway, those things, only things that were
3 felonies or go to their honesty. The government has not yet
4 reached any agreement with us, but I think is considering what
5 position they'll take. The only reason we would end up writing
6 to you is if they take the position that we will not find those
7 things, and we'll give you the information so late you can't
8 find them. So that's where things are now. We're not asking
9 you to rule. We're only saying --

10 THE COURT: I understand. It's always possible that
11 they'll find out that they won't be able to go to trial if you
12 don't have time. I don't know how long it takes to get a
13 transcript from the New York State Supreme Court.

14 MR. STERN: OK.

15 THE COURT: Possibly should have started last May.

16 MR. LENOW: May before last May.

17 THE COURT: Possibly.

18 MR. SCHNEIDER: Just one other thing that we haven't
19 discussed with Mr. Lenow is that we're prepared to accept 3500
20 and *Giglio* material as early as possible for attorneys' eyes
21 only so we can at least prepare, and then at a period of time
22 right before trial we can explain it to our client. So the
23 important part is that Mr. Stern and I have the information in
24 enough time to prepare cross-examination or openings in the
25 whole case rather than just work on the fly as the case goes

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1 on. So that's our concern, Judge. Again, we're prepared.
2 We're not looking -- if there's any issues of safety, we're
3 prepared to figure that out with the government and the Court.

4 THE COURT: I'll tell you what. If you guys can't
5 figure it out after about three weeks, do give me a call, and
6 I'll set a schedule.

7 MR. LENOW: Thank you, Judge. Appreciate that.

8 MR. SCHNEIDER: Thank you.

9 THE COURT: Anything else?

10 MR. LENOW: No. Happy New Year, Judge.

11 THE COURT: Thank you all, and I will see you -- well,
12 we have a final trial conference on --

13 MR. SCHNEIDER: We do have a conference date already
14 scheduled. I believe it's November 20 at 10:00 a.m. That's my
15 understanding.

16 THE COURT: And I've set a schedule for 404(b) and all
17 that stuff.

18 MR. SCHNEIDER: Yes, you have.

19 THE COURT: Great. Good. You have your marching
20 orders.

21 MR. LENOW: Judge, I think we would also move for
22 exclusion of time until the December 4 trial date, to the
23 extent it hasn't already been excluded, to allow the parties to
24 prepare for the upcoming trial.

25 THE COURT: Yes, that's not a statutory reason to

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1 exclude time. That's what the 70 days are for, to prepare for
2 trial, but it turns out that we've already excluded time
3 through December 4 with the consent of defense counsel, so we
4 don't have to do that.

5 MR. LENOW: Fantastic. Thank you, Judge.

6 THE COURT: Great. But do remind them in your office
7 that that's not a statutory basis for excluding time.

8 MR. LENOW: I will alert them, Judge.

9 THE COURT: Thanks, Mr. Lenow.

10 MR. SCHNEIDER: Thank you, Judge.

11 (Adjourned)
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